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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**CORECIVIC, INC.,**

Case No. 4:20-cv-03792-WHA

Plaintiff,

**DEFENDANTS' REPLY IN SUPPORT OF  
ITS REQUEST FOR JUDICIAL NOTICE**

CANDIDE GROUP, LLC and MORGAN SIMON

[Reply in Support of Special Motion to Strike  
Filed Concurrently]

## Defendants

Judge: Hon. William Alsup  
Date: October 22, 2020  
Time: 8:00 a.m.  
Location: San Francisco Courthouse  
Courtroom 7 – 19<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

Action Filed: March 4, 2020  
Action Transferred: June 7, 2020

DAVIS WRIGHT TREMAINE LLP

1        Accompanying their anti-SLAPP Motion, Defendants filed a Request for Judicial Notice  
2 (the “Request”) (Dkt. 41-14) asking the Court to take judicial notice of (1) the three publications,  
3 and updated versions of two of those publications, which are directly at issue in this case (the  
4 “Forbes Posts”); (2) three third party publications hyperlinked within the text of the Forbes Posts  
5 and referenced in the Complaint, namely the NPR Article (Ex. 6<sup>1</sup>), the Business Insider Article  
6 (Ex. 7), and the JPI Report (Ex. 8); and (3) materials from the parties’ own official websites and  
7 legal disclosures. Plaintiff does not challenge the authenticity of any of the documents, nor does it  
8 challenge the propriety of this Court taking judicial notices of the first and third categories.  
9 Nevertheless, CoreCivic has filed a response brief concerning the second category (the  
10 “Response”) (Dkt. 50-1), taking the opportunity to shoehorn in additional substantive arguments  
11 concerning actual malice.

12        The flawed premise of Plaintiff’s Response is the idea that Defendants have offered these  
13 third party publications to the Court to prove the truth of matters reported therein, and/or to assert  
14 Defendants’ “good faith reliance” on the publications’ reported facts. *See* Response at 2-5. This  
15 is not the case. Defendants have not asked the Court to accept the truth of the matters reported in  
16 the third party publications, nor have Defendants asked the Court to make a factual finding of  
17 Defendants’ “good faith”—or of any other factual matter not suitable for judicial notice—on the  
18 instant anti-SLAPP Motion. To the contrary, it is *CoreCivic* who claims Simon read these third  
19 party publications and should have relied upon the truth of matters reported in them: In its  
20 Complaint, CoreCivic affirmatively alleges that Simon read the NPR Article and Business Insider  
21 Article prior to publishing the Forbes Posts, and bases its claim of actual malice on Simon’s  
22 alleged *failure* to believe the truth of reporting in these articles. Compl. ¶¶ 80-82. In short,  
23 CoreCivic asks this Court to consider Simon’s plausible state of mind upon reading the NPR and  
24 Business Insider Articles. It cannot pick and choose which portions of the publications the Court  
25 should consider in making this evaluation. The Court may take notice of the *full* contents of  
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28 <sup>1</sup> Referenced exhibits refer to exhibits filed with the Burke Declaration in support of Defendants’  
anti-SLAPP motion (Dkts. 41-2 – 41-13).

1 articles the Complaint claims Simon read, and should have relied upon, prior to publishing the  
2 statements at issue.

3 Moreover, the Court may also take notice of the fact that the NPR and Business Insider  
4 Articles, as well as the JPI Report, were linked within the challenged statements in the Forbes  
5 Posts, which are also quoted in the Complaint. Request at 3-4. Because an allegedly defamatory  
6 statement must be read in “context,” *see* Opp. at 13 n.10, the Court may consider the content of  
7 these publications in evaluating the meaning of Simon’s statements. The Court need not accept  
8 the truth of the publications or Simon’s “good faith” to make this evaluation. As CoreCivic  
9 admits, the Court may take judicial notice of the existence of these documents. *See* Response at 1  
10 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001)).

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12 Dated: September 24, 2020

Respectfully submitted,

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By: /s/ Thomas R. Burke  
THOMAS R. BURKE

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